

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LAWRENCE GAMBELLA,

JUDGE HOLWELL

Plaintiff, NOTICE OF REMOVAL

-against-

Case No. 07-CIV-

07 CIV 5982

THE NEW YORK CITY DEPARTMENT OF  
EDUCATION f/k/a THE BOARD OF EDUCATION OF  
THE SCHOOL DISTRICT OF THE CITY OF NEW  
YORK and THE SPECIAL COMMISSIONER OF  
INVESTIGATION FOR THE NEW YORK CITY  
SCHOOL DISTRICT,

Defendants.

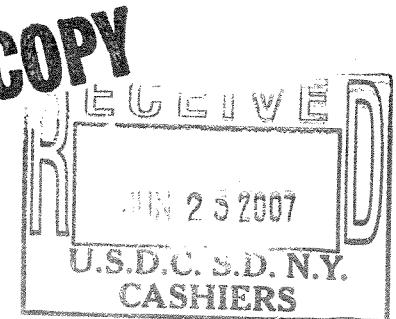
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**TO: THE UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK**

Defendants, by and through their attorney, Michael A. Cardozo, Corporation  
Counsel of the City of New York, respectfully show this Court as follows:

1. On or about May 25, 2007, the New York City Law Department, Office of  
the Corporation Counsel, received by hand a Summons and Verified Complaint in the above-  
entitled action, pending in the Supreme Court of the State of New York, County of New York,  
Index No. 107417/07, naming the New York City Board of Education ("BOE") (also known as  
and being sued herein as the "New York City Department of Education") and the Special  
Commissioner of Investigation for the New York City School District ("SCI") as defendants  
therein, and setting forth the claims for relief upon which the action is based. On or about June  
8, 2007, the SCI received, by hand, a copy of the same. A copy of plaintiff's Summons and  
Verified Complaint, verified May 22, 2007, is annexed hereto as Exhibit "A."

2. The above-captioned action is a civil action of which the District Court  
has original jurisdiction pursuant to 28 U.S.C. § 1331, in that it alleges a claim which arises



under the laws of the United States, and a violation of plaintiff's federal civil rights by defendants. This action is therefore removable to the District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. §§ 1441(b) and 1443.

3. Plaintiff brings this lawsuit claiming, inter alia, that defendants, while acting under color of state law, deprived plaintiff of his constitutional rights, as secured by the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. § 1983.. See Exhibit "A" ¶¶ 22-23, 26.

4. This Notice of Removal is timely because it is being filed within thirty days (30) days of receipt of the initial pleading. See 28 U.S.C. § 1446(b).

5. Defendants all consent to removal of this action.

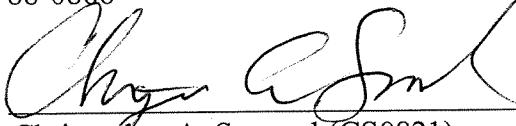
6. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending.

**WHEREFORE**, defendants respectfully request that the above-captioned action be removed from the Supreme Court of the State of New York, County of New York, to the United States District Court for the Southern District of New York.

Dated:           New York, New York  
                June 22, 2007

MICHAEL A. CARDOZO  
Corporation Counsel of the  
City of New York  
Attorney for Defendants  
100 Church Street, Room 2-138  
New York, New York 10007  
(212) 788-0866

By:

  
Christopher A. Seacord (CS0821)  
Assistant Corporation Counsel

TO: Steven A. Friedman, Esq.  
James R. Sandner  
Attorney for Plaintiff  
52 Broadway – 9th Floor  
New York, New York 10004

# Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

LAWRENCE GAMBELLA,

Plaintiff,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION  
f/k/a THE BOARD OF EDUCATION OF THE SCHOOL  
DISTRICT OF THE CITY OF NEW YORK  
and THE SPECIAL COMMISSIONER OF  
INVESTIGATION FOR THE NEW YORK CITY SCHOOL  
DISTRICT,

Defendants.

TO THE ABOVE NAMED DEFENDANTS:

**YOU ARE HEREBY SUMMONED AND REQUIRED** to answer the verified  
complaint in this action and to serve a copy of your answer upon plaintiff's attorney within  
twenty (20) days after service of this summons, exclusive of the day of service, or within thirty  
(30) days after service is complete if this summons is not personally delivered to you within the  
State of New York. In the case of your failure to answer, judgment will be taken against you by  
default for the relief demanded in the verified complaint.

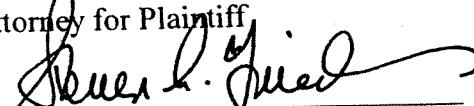
The basis of venue designated is that Defendants are situated in New York County.

Dated: New York, New York

May 24, 2007

By:

JAMES R. SANDNER  
Attorney for Plaintiff

  
STEVEN A. FRIEDMAN  
Office & P.O. Address  
52 Broadway, 9<sup>th</sup> Floor  
New York, NY 10004  
(212)533-6300

051e000213  
**SUMMONS**

**Index No. 107417/07**

Plaintiff designates New York  
County as the place of trial.

The basis of venue is that Defendants  
are situated in New York County.

NEW YORK  
COUNTY CLERK'S OFFICE

**MAY 25 2007**

NOT COMPARED  
WITH COPY FILE

Defendants' Addresses:

BOARD OF EDUCATION OF THE CITY SCHOOL  
DISTRICT OF THE CITY OF NEW YORK  
49-51 Chambers Street  
New York, New York 10007

DEPARTMENT OF EDUCATION OF THE  
CITY OF NEW YORK  
49-51 Chambers Street  
New York, New York 10007

DEPARTMENT OF EDUCATION OF THE  
CITY OF NEW YORK  
c/o Office of Corporation Counsel of the City of New York  
100 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007

THE SPECIAL COMMISSIONER OF  
INVESTIGATION FOR THE NEW YORK CITY  
SCHOOL DISTRICT  
25 Broadway, 8<sup>th</sup> Floor  
New York, NY 10004

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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LAWRENCE GAMBELLA,

Plaintiff,

-against-

THE NEW YORK CITY DEPARTMENT OF EDUCATION  
f/k/a THE BOARD OF EDUCATION OF THE SCHOOL  
DISTRICT OF THE CITY OF NEW YORK  
and THE SPECIAL COMMISSIONER OF  
INVESTIGATION FOR THE NEW YORK CITY SCHOOL  
DISTRICT,

**VERIFIED COMPLAINT**

**Index No.**

Defendants.

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Plaintiff, by his attorney, James R. Sandner (Steven A. Friedman, Of Counsel), as and for his Verified Complaint, alleges as follows:

**VENUE**

1. Pursuant to CPLR §504, venue is in this county because both defendants are situated in New York County.

**PARTIES**

2. Plaintiff is an individual residing in State of New York, County of Richmond.
3. Defendant New York City Department of Education, f/k/a, Board of Education of the School District of the City of New York ("Department") is a municipal agency and entity organized and existing, upon information and belief, pursuant to the laws of the State and City of New York. The Department is, upon information and belief, authorized and empowered to provide educational services to students residing in the City of New York.

4. Defendant Special Commissioner of Investigation for the New York City School District ("SCI") is a municipal agency and entity organized and existing, upon information and belief, pursuant to the laws of the State and City of New York. The SCI is, upon information and belief, authorized and empowered to investigate allegations of misconduct by employees of the Department.

### **NOTICE OF CLAIM**

5. Pursuant to New York Education Law § 3813 and New York General Municipal Law §50-e, a Notice of Claim was duly and timely served on defendants on April 25, 2007.

### **FACTUAL BACKGROUND**

6. Plaintiff was employed by the Department as a teacher from 1973 to 1976.

7. In or about 1976, he continued to be employed by the Department as an Assistant Principal.

8. Plaintiff retired from the Department in June, 2002.

9. Prior to his retirement in June, 2002, plaintiff was approached by investigators for the SCI who informed plaintiff that two of his former students had reported to them incidents of sexual abuse, which allegedly occurred in 1975 and 1976, when plaintiff was a teacher at a school in Brooklyn, New York ("the Allegations").

10. On or about September 11, 2002 the SCI issued a report ("the Report") that addressed the Allegations and recommended to the Department's Chancellor, that because of the Allegations, plaintiff ".... be barred from future employment with the Department of Education, including work as a consultant."

11. Following the issuance of the Report, the New York State Education Department ("SED") commenced a proceeding pursuant to Part 83 of the Regulations of the Commissioner of

the New York State Education Department ("Part 83") to terminate plaintiff's New York State teaching license. Upon information and belief, the Part 83 proceeding was commenced, in part, as a result of the issuance of the Report, and the Department's notification of SED of the Allegations.

12. Pursuant to regulations promulgated by the SED, plaintiff was entitled to a hearing before a panel to determine whether there was cause for the termination of his New York State teaching license because of the allegations of sexual abuse which allegedly occurred in 1975 and 1976. The two individuals who accused plaintiff of sexual abuse during that time testified at the hearing.

13. On February 3, 2004 the Part 83 hearing panel unanimously found that the SED had not proven the charges and had not met its burden of proof. It therefore dismissed the Part 83 proceeding in its entirety.

14. The Part 83 panel therefore cleared plaintiff of all the allegations contained in the SCI report because the Part 83 panel determined that there was insufficient evidence to support any allegations of sexual abuse by plaintiff allegedly occurring in 1975 and 1976.

15. Plaintiff then obtained employment as a Coordinator of translators for the Diocese of Brooklyn ("Diocese").

16. In or about January, 2007 Plaintiff was informed by his supervisor at the Diocese that because of information the Diocese had obtained he could resign his employment with the Diocese, or his employment would be terminated.

17. Subsequent investigation revealed that an undisclosed individual had sent the Diocese newspaper clipping of the allegations which had been posted on a website.

18. Individuals acting on behalf of the Diocese then sent the SCI a request made, upon information and belief, pursuant to the Freedom of Information Law ("FOIL"), for information regarding the Allegations.

19. The SCI then released the Report to the Diocese.

**AS AND FOR A FIRST CAUSE OF ACTION: VIOLATION  
OF CONSTITUTIONAL RIGHTS**

20. Plaintiff repeats and realleges the allegations set forth in ¶¶ 1-19 of the Verified Complaint as though set forth at length herein.

21. That as a result the SCI's release of the Report, plaintiff is precluded from securing employment, despite being completely exonerated of the Allegations.

22. That as a result of the SCI's release of, and continued potential release of, the Report, plaintiff will be precluded and foreclosed from obtaining employment because he is "stigmatized", in violation of his federal and New York State constitutional rights.

23. That the right to be free of a "stigma" which prevents future employment is a protected "liberty interest" under the 14<sup>th</sup> Amendment to the U.S. Constitution and Article 1, §6 of the New York State Constitution.

24. That by releasing the SCI Report, the SCI has violated plaintiff's constitutional rights because it resulted in the foreclosure of future employment opportunities for Plaintiff.

25. That both the SCI and the Department will potentially continue to release the Report and similar information relating to the Allegations, which will continue to foreclose plaintiff's employment opportunities.

26. That this Court must declare that Plaintiff's constitutional rights were violated and that the continued release of the Report and information relating to the allegations by the SCI and the Department violates both the U.S. and New York State Constitutions.

**AS AND FOR A SECOND CAUSE OF ACTION:**  
**PERMANENT INJUNCTION**

27. Plaintiff repeats and realleges the allegations contained in paragraphs 1-26 of the Verified Complaint as though set forth at length herein.

28. That as a result of the past and possible future release of the Report and information contained in plaintiff's personnel file maintained by the Department, plaintiff has been and will continue to be irreparably harmed because he will be unable to secure future employment.

29. That plaintiff is similarly entitled to a permanent injunction because he has no adequate remedy at law against the Department and the SCI.

30. That because of the violation of plaintiff's constitutionally protected liberty interest in securing future employment, Plaintiff is entitled to a permanent injunction directing that both the SCI and the Department be permanently enjoined from releasing the Report and any information relating to the Allegations.

**WHEREFORE**, plaintiff respectfully demands an order:

- (1) That the SCI and Department expunge the SCI Report from Plaintiff's personnel file and any files maintained by the SCI, as well as any electronic database or registries maintained by the Department and the SCI;
- (2) permanently prohibiting and enjoining both the Department and the SCI from

disclosing the Report or any information relating to the allegations contained therein;

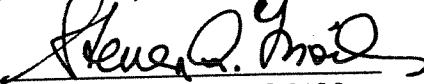
- (3) requiring the Department to provide to prospective employers only the dates of plaintiff's employment with the Department and his date of resignation; and
- (4) For such other and further relief as the Court deems just and proper.

Dated: New York, NY  
May 18, 2007

Respectfully Submitted,

JAMES R. SANDNER  
Attorney for Plaintiff Gambella  
Office & PO Address  
52 Broadway - 9<sup>th</sup> Floor  
New York, NY 10004

By:

  
STEVEN A. FRIEDMAN

**VERIFICATION**

STATE OF NEW YORK )  
ss.:  
COUNTY OF NEW YORK )

LAWRENCE GAMBELLA, being duly sworn, deposes and says that: deponent is the plaintiff in this matter, deponent has read the annexed Verified Complaint, and knows the contents thereof, and that the same is true to the knowledge of deponent except as to matters therein stated to be alleged upon information and belief, and that as to those matters deponent believes them to be true.

Lawrence Gambella  
LAWRENCE GAMBELLA

Sworn to before me this  
22<sup>nd</sup> day of May, 2007.

Sita Beutin  
Notary Public

SITA BEUTIN  
NOTARY PUBLIC, State of New York  
No. 41-4987976  
Qualified in Queens County  
Commission Expires 10/28/09

**CERTIFICATE OF SERVICE**

I, Christopher Seacord, hereby certify that a copy of the attached Notice of Removal was caused to be served on the party listed below by mail on June 22, 2007.

Steven A. Friedman, Esq.  
James R. Sandner  
Attorney for Plaintiff  
52 Broadway – 9th Floor  
New York, New York 10004

Dated:      New York, New York  
                June 22, 2007



Christopher A. Seacord (CS0821)  
Assistant Corporation Counsel

Case No. 07 Civ.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	LAWRENCE GAMBELLA,  Plaintiff,  -against-	THE NEW YORK CITY DEPARTMENT OF EDUCATION f/k/a THE BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF NEW YORK and THE SPECIAL COMMISSIONER FOR THE NEW YORK CITY SCHOOL DISTRICT,  Defendants.
<p><b>NOTICE OF REMOVAL</b></p> <p><b>MICHAEL A. CARDozo</b> Corporation Counsel of the City of New York Attorney for Defendants 100 Church Street, Room 2-138 New York, New York 10007</p> <p><i>Of Counsel: Christopher A. Seacord Tel: (212) 788-0866 Matter No. 2007-017414</i></p> <p><i>Due and timely service is hereby admitted.</i></p> <p>New York, N.Y. ...., 200 ..... Esq. ..... Attorney for ..... .....</p>		